

SUPREME COURT OF KENTUCKY

Morris v. Cabinet for Families & Children

69 S.W.3d 73 (Ky. 2002) · No. 1999-SC-0902-DG · Decided February 21, 2002

SUMMARY

The Supreme Court of Kentucky held that the appellants’ notice of appeal substantially complied with CR 73.03 even though the minor child was not expressly named as an appellee in the body of the notice. Because the child was identified in the case caption and the guardian ad litem received the pleadings, the Court reversed the dismissal and remanded for consideration of the appeal on its merits.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Stumbo
JURISDICTION	Kentucky
DECIDED	February 21, 2002
DOCKET	1999-SC-0902-DG
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Parents appealed an involuntary termination of parental rights order. The Kentucky Court of Appeals dismissed the appeal because the notice of appeal named the Cabinet as appellee but did not name the child as an appellee in the body of the notice, although the child was identified in the caption and the child's guardian ad litem received the pleadings.
STANDARD OF REVIEW	De novo review of whether the notice of appeal complied with Kentucky Civil Rule 73.03 and adequately identified the parties to the appeal.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; precedential.
PARTIES	Joann Faircloth Morris, a/k/a Joann Morris, Billy Joe Morris v. Cabinet for Families and Children, Commonwealth of Kentucky, for and on behalf of Christopher James Morris, an infant

TOPICS

- appellate procedure
- civil procedure
- termination of parental rights
- parental rights
- preservation of error

PRACTICE AREAS

appellate procedure

civil procedure

family law

termination of parental rights

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred by dismissing the appeal because the notice of appeal did not name the child as an appellee in the body of the notice, despite identifying the child in the caption and providing the child's guardian ad litem with the pleadings.

HOLDINGS

1. A notice of appeal substantially complies with CR 73.03 when the child is identified in the caption and the child's guardian ad litem receives the relevant pleadings, even though the child is not separately named as an appellee in the body of the notice.

KEY QUOTATIONS

“The principal objective of a pleading is to give fair notice to the opposing party.” (69 S.W.3d at 74)

“Thus, as stated above, the inclusion of the child's name in the caption, coupled with the child's guardian having been served with the relevant pleadings, is more than sufficient to provide the parties with notice and to satisfy CR 73.03.” (69 S.W.3d at 75)

FACTUAL BACKGROUND

The Cabinet filed a petition to terminate Joann and Billy Morris's parental rights to CJM, an infant, based on abuse and neglect. The Fayette Circuit Court terminated the parents' rights and placed custody of the child with the Cabinet. In their notice of appeal, the parents named the Cabinet as appellee, identified CJM in the caption, and served the child's guardian ad litem with the pleadings, but did not name CJM as an appellee in the body of the notice.

PROCEDURAL HISTORY

The Cabinet filed a petition for involuntary termination of parental rights in Fayette Circuit Court. The circuit court terminated the appellants' parental rights and placed the child in the Cabinet's custody. The Court of Appeals dismissed the parents' appeal for failure to name the child as an appellee in the notice of appeal. The Supreme Court of Kentucky reversed and remanded for a decision on the merits.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeals was instructed to decide the appeal on its merits.

CASES CITED

- R.L.W. v. Cabinet for Human Resources, 756 S.W.2d 148 (Ky. App. 1988)
- Blackburn v. Blackburn, 810 S.W.2d 55 (Ky. 1991)
- Lee v. Stamper, 300 S.W.2d 251 (Ky. 1957)
- R.C.R. v. Commonwealth, 988 S.W.2d 36 (Ky. App. 1998)

OPINION

STUMBO, J.

69 S.W.3d 73 (2002) Joann Faircloth MORRIS, a/k/a Joann Morris, and Billy Joe Morris Appellants v. CABINET FOR FAMILIES AND CHILDREN, Commonwealth of Kentucky, For and on Behalf of Christopher James Morris, an Infant Appellee No. 1999-SC-0902-DG. Supreme Court of Kentucky. February 21, 2002. *74 John F. Rampulla, III, Lexington, for Appellants. Terry L. Morrison, Frankfort, for Appellee.

STUMBO, Justice. On March 20, 1997, the Appellee, the Cabinet for Families and Children, as petitioner and next friend of CJM, an infant, filed a Petition for Involuntary Termination of Parental Rights in Fayette Circuit Court.

On August 20, 1998, the trial court entered an order terminating the parental rights of Appellants, Joann Faircloth Morris and Billy Joe Morris, and placing custody of the minor child with the Cabinet for Families and Children due to abuse and neglect.

In October 1998, Appellants filed an appeal with the Court of Appeals; however, the language of the notice of appeal specifically named only the Cabinet for Families and Children as Appellee. The minor child was not named as an Appellee, but was named within the style of the case, "In Re the Interest of [CJM], a Child."

The Court of Appeals dismissed the appeal citing R.L.W. v. Cabinet for Human Resources, Ky.App., 756 S.W.2d 148 (1988), which held that a child who is the subject of a parental termination order is a "necessary" party to an appeal, and a failure to name the child as a party is grounds for dismissal.

The only issue before this Court is whether the Court of Appeals committed error in dismissing the appeal for failure of the Appellants to name the child as an Appellee within the body of the notice of appeal. We find that they did err, and thus reverse and remand to the Court of Appeals for a decision on the merits of the case.

In Blackburn v. Blackburn, Ky., 810 S.W.2d 55 (1991), this Court held that a notice of appeal was adequate under CR 73.03 if it contained a listing of parties sufficient to give the opposing party notice of the identities of the parties against whom the appeal was filed.

The principal objective of a pleading is to give fair notice to the opposing party. Id. at 56, citing Lee v. Stamper, Ky., 300 S.W.2d 251 (1957). That objective has been met in this case. Appellants'

notice of appeal named the minor child, CJM, in the caption, and, although he was not included in the certificate of service, copies of the pleadings were provided to the child's guardian ad litem.

These factors together substantially comply with the requirements of CR 73.03 and provided sufficient notice to all parties concerned that the minor child was also an Appellee. Here, as in Blackburn, a failure to reverse the decision of the Court of Appeals on this issue would both result in an unfair outcome for the Appellants and would overburden this Court's standards of compliance with the Rules.

Blackburn at p. 56. In *R.C.R. v. Commonwealth*, Ky.App., 988 S.W.2d 36 (1998), the Court of Appeals held, again in a parental rights termination case, that failure to name the child as a party to the appeal did not require dismissal *75 of the appeal. There, as in the case sub judice, the child was named in the caption and the child's guardian was given all relevant pleadings.

The Court went on to note that, though the notice of appeal was poorly drafted, *Blackburn v. Blackburn*, Ky., 810 S.W.2d 55 (1991), had relaxed the compliance standards for CR 73.03. Thus, as stated above, the inclusion of the child's name in the caption, coupled with the child's guardian having been served with the relevant pleadings, is more than sufficient to provide the parties with notice and to satisfy CR 73.03.

This case is reversed and remanded to the Court of Appeals for a decision on the merits. All Concur.